

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 283 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ANKUSH OVERSEAS PVT. LTD.

Versus

MILAN METALS PVT. LTD.

Appearance:

1. COMPANY PETITION No. 283 of 2003
MR VIMAL M PATEL for Petitioner No. 1
MR ANSHIN H DESAI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 19/01/2005

ORAL JUDGEMENT

The petitioner has filed this petition under
Section 433(1)(e) read with Section 434 of the Companies

Act, 1956 for winding up of the respondent Company.

2. It is the case of the petitioner that the respondent Company is indebted to the petitioner for an amount of Rs. 8,10,810/- with further interest thereon at 24% p.a. from the due date of payment till realisation against the Bill dated 13.11.2002, 22.11.2002, 04.12.2002 and 21.12.2002. Since the Company has failed to pay the petitioner's dues, the petitioner called upon the Company to pay the said dues. However, the respondent Company has failed and neglected to pay the petitioner's dues.

3. Since the respondent Company has not made any payment to the petitioner, the petitioner has issued statutory notice dated 18.08.2003 calling upon the respondent company to pay the outstanding dues with interest failing which the petitioner would be constrained to file winding up petition before this Court. Despite the service of notice, the payment was not made by the respondent company and hence, the present petition was filed before this Court.

4. This Court has issued notice on 17.10.2003. The petition was admitted on 24.08.2004. However, the order of advertisement was deferred for the period of two weeks only with a view to give opportunity to the respondent Company.

5. The Court has thereafter passed an order of advertisement on 04.11.2004. The petitioner was directed to give advertisement in 'Indian Express' English daily and 'Gujarat Samachar' Gujarati Daily - Both of Ahmedabad editions on or before 09.12.2004. The petitioner has filed the affidavit of advertisement on 22.12.2004 along with which relevant newspaper cuttings containing the aforesaid advertisement were filed.

6. Heard Mr. Vimal M. Patel, learned advocate appearing for the petitioner and Mr. Anshin H. Desai, learned advocate appearing for the respondent Company. The respondent Company has not filed any reply to the petition.

7. Mr. Patel has submitted that the respondent

Company is indebted to the petitioner and other Financial institutions and the Company was not in a position to make payment of the outstanding amount due and payable to the petitioner which fact was evident from the various letters written by the petitioner to respondent. The financial substratum of the company is totally lost and it is not in a position to pay the outstanding dues as aforesaid. The amount claimed by the petitioner in the present petition is an admitted amount and the respondent Company has failed and neglected to pay the petitioner's dues. The petitioner has taken search with the office of the Registrar at Ahmedabad from where it was found that the Company is heavily indebted to the Banks and other financial institutions. He has, therefore, submitted that it is just and fit that the Company be ordered to be wound up.

8. Mr. Desai is not in a position to controvert the facts stated and the outstanding amount of the petitioner. He has submitted that the financial position of the respondent Company is not sound and hence, it is not possible to make any payment to the petitioner.

9. After having heard learned advocates appearing for the respective parties and after having gone through the contents of the petition as well as the documents attached therewith, the Court is of the view that the respondent Company is unable to discharge its liability towards the petitioner. The respondent Company is also heavily indebted to other Financial institutions and Banks. The financial substratum of the respondent Company is totally lost. It is not possible for the respondent Company to carry on its business activities without discharging its liability to Creditors. In this view of the matter, it is not in the interest of anyone to allow such company to run and it is just and proper to pass the order of winding up. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as the Liquidator of the Company and he is directed to take charge over the assets of the Company and is further directed to exercise all powers which are vested with him under the Provisions of the Act. It is however made clear that before taking possession of the assets of the Company, the O.L. shall intimate to the Secured Creditors, if any and to the responsible officer of the respondent Company. The O.L. is further directed that before make inventory of the assets or appointing any security agency, he shall take prior permission of

this Court.

10. With this direction, this petition is allowed.

Sd/-

[K.A. PUJ, J.]

#Savariya#
